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TAGS: [ECON](#) [ECPS](#) [EINV](#) [GT](#)
SUBJECT: GUATEMALA'S TELECOMS CAFTA DISPUTE

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[1](#)B. GUATEMALA 689

[1](#)1. (SBU) Summary: USTR and Embassy officials met with GOG trade and telecoms officials July 23-25 in an effort to resolve a potential CAFTA arbitration complaint by a U.S. telecoms investor (Americatel) and to discuss broader CAFTA-DR compliance issues related to the case. Discussions centered on why Guatemala's telecom regulator (the Superintendancy of Telecommunications, or SIT) was unable or unwilling to force the reconnection of four high-speed data (E-1) lines after Telgua, Guatemala's dominant telecommunications provider, unilaterally disconnected them in clear violation of CAFTA-DR in October 2006. Discussions exposed fissures between the Ministry of Economy, which is committed to the rapid resolution of the case, and the Ministry of Communications and the SIT which appeared complicit in Telgua's strategy of delaying a judicial resolution. The deadlock makes a final decision unlikely and increases the likelihood Americatel will seek relief via the CAFTA-DR arbitration mechanism in Washington. The case exposed gaps in Guatemala's telecoms regulatory regime and all parties agreed that it needs reform. USTR and Embassy officials are currently working on an action plan to assist the GOG in taking the necessary steps. End Summary.

BACKGROUND

[1](#)2. (SBU) In June 2006 an American entrepreneur purchased Americatel Guatemala, a Guatemalan telecommunications operator which had a pre-existing inter-connection agreement with Telgua, the major telecommunications operator in Guatemala (a subsidiary of America Movil, owned by Mexico's Carlos Slim). Under the existing interconnection agreement, Americatel had 16 E-1 lines interconnecting with Telgua. That number was later increased to 20 E-1 lines. The interconnection agreement expired in 2003, but Americatel had begun the process of trying to renew the agreement and eventually requested the intervention of the SIT to resolve disputes over the terms of the contract renewal. The main issue in dispute was the per-minute price which Telgua would charge Americatel for connection. The Ministry of Communications deemed that Americatel filed its papers one day late with the SIT and therefore the rates which Telgua had proposed in the renewal should be accepted. Americatel is in the process of appealing this decision and, until there is a resolution, believes that it is entitled to continue paying the per-minute rate established in the initial interconnection agreement, given that the agreement stipulates that the rates shall remain in force while the agreement is being renewed.

[1](#)3. (SBU) In apparent retaliation for Americatel's refusal to pay the new rate Telgua proposed for the renewal of the interconnection, on October 7, 2006, Telgua disconnected four

of Americatel's E-1 lines. This action was a clear violation of CAFTA-DR Chapter 13, Article 13.2. Americatel initially sought relief through the SIT and later brought court action to force the reconnection of these E-1 lines. The SIT issued several letters to Telgua asking the company to reconnect the lines. Telgua ignored the requests, and instead pursued a strategy of delaying judicial resolution of the case. The SIT took no further action.

¶4. (SBU) On November 9, 2007, the Guatemalan Constitutional Court issued a decision in favor of Americatel ordering Telgua to reconnect the E-1 lines. Despite this decision, Telgua succeeded in delaying its enforcement and has not reconnected the E-1 lines.

USTR Visit

¶5. (SBU) In efforts to resolve the issue, Embassy Officers Q5. (SBU) In efforts to resolve the issue, Embassy Officers repeatedly demarched SIT and Ministry of Economy officials and succeeded in bringing together the officials from the Ministry of Economy, the Ministry of Communications and the SIT to discuss the case in early July. This meeting brought to light possible deficiencies in Guatemala's telecommunications regulatory regime that needed to be reviewed by trade experts. USTR's Regional Director for Central America, Director of Telecom and E-Commerce Trade Policy, and Legal Advisor to Guatemala agreed to visit Guatemala July 23-25 to discuss solutions and the CAFTA-DR compliance implications of the dispute. The delegation met first with Minister of Economy Caballeros who expressed his strong support of CAFTA-DR and for quickly resolving the Americatel dispute. He said he would work with the Ministry of Communications to ensure the case is resolved before it is submitted to international arbitration. Caballeros regretted that the SIT had not resolved the case previously and suggested that existing processes be used to accelerate settlement. USTR noted the SIT's long-standing position that it lacks the authority to force Telgua to reconnect the four E-1 lines and stressed that CAFTA-DR requires each signatory country to provide its regulator with sufficient authority to ensure interconnection is provided by major carriers. Caballeros offered to pressure the SIT and Ministry of Communications to take immediate action to resolve the case. The Minister added that a long-term solution was needed to improve competition in the telecommunications market and that the Ministry of Economy would, together with the USG, develop a proposal that would strengthen Guatemala's telecommunications regime.

¶6. (SBU) The Superintendent of Telecommunications and lawyers from the Ministry of Communications met next with the USTR and Embassy team. SIT representatives reiterated previous assertions that the SIT only had conciliatory powers in cases where two parties do not reach a commercial agreement on interconnection. The SIT would only be empowered to levy fines in the event an administrative court ordered Telgua to reconnect and Telgua failed to do so. Americatel's appeal to a penal rather than an administrative court prevents the SIT from acting. While the SIT's authority is weak, we believe it could do more to help solve the situation. Its current position of inaction fits well with Telgua's strategy of delaying final resolution of Americatel's claims and highlights the lengthy appeal and injunction processes in Guatemala that make it difficult to determine when a court decision is final.

¶7. (SBU) During a wrap-up meeting on July 25, SIT Superintendent Samayoa reiterated the SIT's need for a "final" decision by the Constitutional Court to act, but committed to taking immediate action to require Telgua to reconnect the four E-1 lines as soon as a provisional decision was received. When pressed for details, the SIT claimed they had a technical team ready to deliver a formal demand for reconnection, and would inspect the facilities to ensure the connection was made. The SIT offered to invite

Econoff to witness the event. The SIT then noted, in passing, that it is now also waiting for the Constitutional Court to issue a clarification requested by Telgua to define the exact requirements for interconnection. This process could add additional months to the final decision. The SIT would not commit to imposing punitive measures against Telgua if it refused to comply with the Constitutional Court decision. Vice Minister of Economy Ruben Morales noted he would coordinate the development of the GOG's strategy to resolve the dispute and strengthen Guatemala's telecommunications regime. He hoped to present a draft action plan for discussion with the Embassy and USTR in a video conference to be held August 13.

18. (SBU) Comment: The Minister of Economy's commitment to resolve the dispute with Americatel and bring Guatemala into compliance with CAFTA-DR on telecoms issues reflects his understanding of Guatemala's broader interest in improving the investment climate to attract foreign capital, as well as his recognition of the role a well-regulated and competitive market plays in advancing Guatemala's development. Through inaction and clear lack of political will, the SIT and Ministry of Communications appear complicit in the implementation of Telgua's strategy to delay resolution of the case. While willing to accept technical assistance and improve regulation, there is no indication the SIT or the Ministry of Communications want to resolve the specific Americatel dispute. This case is therefore likely to move to CAFTA-DR arbitration. If that happens, Guatemala will have the dubious distinction of being the only CAFTA-DR signatory with two investment dispute cases before arbitration (the other involving U.S. investor Railroad Development Corporation.)
McFarland